

SAFE DAM ACT

58:4-1 Reservoir, dam restrictions.

58:4-1. a. No municipality, corporation or person shall, without the consent of the Commissioner of Environmental Protection, hereafter in this chapter designated as the commissioner, build any reservoir or construct any dam, or repair, alter or improve existing dams on any river or stream in this State or between this State and any other state which will raise the waters of the river or stream more than five feet above its usual mean low-water height.

No municipality, corporation or person shall, without the consent of the commissioner, build any reservoir or construct any dam, or repair, alter or improve existing dams in the pinelands area, as designated by subsection a. of section 10 of P.L.1979, c.111 (C.13:18A-11), which will raise the waters of any river or stream more than eight feet above the surface of the ground where the drainage area above the dam or reservoir is more than one square mile in extent and where the water surface created by the dam or reservoir is more than 100 acres in extent.

The commissioner may investigate and take appropriate action regarding any dam or reservoir about which the commissioner has a security or safety concern.

With respect to dams and reservoirs located on lands utilized for agricultural or horticultural purposes within the pinelands area, the commissioner's actions shall be undertaken after consultation with the Secretary of Agriculture.

b. The commissioner shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C.7:50-5.14 in the pinelands area.

Amended 1981, c.249, s.3; 1985, c.33; 1995, c.402, s.1; 2001, c.82, s.1.

58:4-2. Approval of plans of reservoirs and dams

Every municipality, corporation or person, before constructing any reservoir or dam subject to the provisions of this chapter shall apply to the commissioner for the approval of the plans of such reservoir or dam, which approval the commissioner may grant with such modifications, limitations or changes as in his judgment may be necessary for the protection of life and property.

Amended by L.1981, c. 249, s. 4, eff. Aug. 6, 1981.

58:4-3. Descriptions, surveys and plans of existing reservoirs and dams

Every municipality, corporation or person owning and maintaining or having control of any reservoir or dam shall, upon written request therefor, furnish to the commissioner as full, true and particular description of the reservoir or dam as may be practicable, and shall, when so requested by the commissioner cause to be made such surveys, plans and drawings of the reservoir or dam as may be necessary to give sufficient information for the determination of its safety as may be required by the commissioner.

Amended by L.1981, c. 249, s. 5, eff. Aug. 6, 1981.

58:4-4. Inspection of reservoirs and dams

Upon written application by any person owning or representing property liable to be injured or destroyed by the breaking of any reservoir or dam, or upon application by the mayor or governing body of any municipality on account of possible danger of loss of life or of injury to any property within the municipality from the breaking of any reservoir or dam, or without such complaint whenever the commissioner shall choose, he shall forthwith thoroughly inspect such reservoir or dam.

Amended by L.1981, c. 249, s. 6, eff. Aug. 6, 1981.

58:4-5 Alterations, additions and repairs of unsafe reservoirs or dams; duties of owner.

58:4-5. a. An owner or person having control of a reservoir or dam shall:

(1)Implement all measures required pursuant to this chapter or the provisions of P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation, code, permit or order issued pursuant thereto, including but not limited to, performance of periodic inspections required pursuant to section 2 of P.L.1981, c.249 (C.58:4-8.2) or development, updating and implementation of emergency action plans;

(2)Provide to the Department of Environmental Protection, upon request, any reports or information required pursuant to this chapter or the provisions of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto; and

(3)Implement any action ordered by the Commissioner of Environmental Protection to correct conditions that render the reservoir or dam to be considered, as determined by the commissioner, unsafe or improperly maintained or to bring the reservoir or dam into compliance with standards established pursuant to this chapter, or any rule or regulation adopted, or permit or order issued pursuant thereto.

b. If, in the judgment of the commissioner, any reservoir or dam is not sufficiently strong to resist the pressure of water that is or may be upon it or there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam, or if for any other cause the commissioner shall determine the reservoir or dam to be unsafe or improperly maintained, the commissioner shall take any action authorized pursuant to this section to compel compliance with the provisions of this chapter, or any rule or regulation adopted, or permit or order issued pursuant thereto, and shall determine whether the water in the reservoir or above the dam shall be drawn off in whole or in part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained or whether the dam or appurtenant structures located therein should be removed. The commissioner also may take action as authorized pursuant to R.S.58:4-6 against the owner or person having control of the reservoir or dam for such relief as the commissioner may determine. The commissioner shall forthwith in writing order the owner or person having control of the reservoir or dam to cause the alterations, additions and repairs to be made within the time to be limited in the order. A copy of any order issued by the commissioner pursuant to this section shall be sent to the clerk of the municipality and the clerk of the county in which the reservoir or dam is located. The commissioner also may order the water in the reservoir or above the dam to be drawn off in whole or in part as the commissioner may determine. The commissioner shall not approve the decommissioning of a reservoir or dam until the commissioner has provided 30 days' prior notice

and the commissioner has complied with the provisions of R.S.58:4-10 as applicable. The notice of the proposed decommissioning shall be published at least 30 days prior to the decommissioning of the reservoir or dam in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located. The commissioner shall have the right to enter upon any and all properties for the purpose of obtaining information about the safety and proper maintenance of any reservoir, dam or appurtenant structures located therein.

c. Any owner or person having control of a reservoir or dam who fails to comply with an order issued pursuant to this section or R.S.58:4-6 may be liable to the department in an amount equal to the cost of removal of the dam or appurtenant structures located therein undertaken by the department, including attorney's fees and court costs, pursuant to subsection d. of this section.

Whenever two or more owners or persons having control of a reservoir or dam are liable for the cost of removal, including attorney's fees and court costs, the department may allocate the cost of removal among the liable parties using such factors as the department determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution from any other person responsible for the cost of removal of the dam pursuant to any other statute or under common law.

d. (1) Whenever the commissioner determines that a dam is in imminent danger of failure and has reasonable cause to believe that danger to life or property may be anticipated from the reservoir, dam or appurtenant structures located therein, and the owner of the dam or person having control of the reservoir or dam has failed to comply with an order to repair the dam issued pursuant to subsection a. of this section or R.S.58:4-6, or to take such interim measures as the department determines are appropriate, including reducing the amount of water impounded by the dam or breaching the dam, the department may, in addition to actions authorized pursuant to R.S.58:4-6, enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located and, using resources and personnel available to the department, remove or cause to be removed the dam or appurtenant structures located therein, allowing the water to flow freely.

Prior to any action by the department pursuant to this subsection, the owner or person having control of the reservoir or dam, shall, no later than 60 days after receipt of a notice from the department of a pending removal action, submit to the department, in writing, an acceptable implementation plan addressing the proposed actions to be taken regarding the failed or failing reservoir or dam.

(2) Any expenditures made by the department pursuant to this section shall constitute, in each instance, a debt to the State. The debt shall constitute a lien on all property owned by the owner or person having control of the reservoir or dam when a certificate of debt, incorporating a description of the property of the owner or person having control of the reservoir or dam subject to the repair, and related costs, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment and order docket the name and address of the owner or person having control of the reservoir or dam and the amount of the lien as set forth in the certificate of debt. Upon entry by the clerk, the lien, to the amount committed by the department for dam repair, shall attach to the revenues and all real and personal property of the owner or person having control of the reservoir or dam, whether or not the owner or person having control of the reservoir or dam is insolvent.

The certificate of debt filed pursuant to this paragraph which affects the property of an owner or person having control of a reservoir or dam subject to the dam repairs shall create a lien with priority over all other claims or liens which are or have been filed against the property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this certificate of debt shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this certificate of debt.

The certificate of debt filed pursuant to this subsection which affects any property of an owner or person having control of a reservoir or dam, other than the property subject to the repairs, shall have priority from the day of the filing of the certificate of debt over all other claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a certificate of debt pursuant to this subsection.

Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners of property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the department in the amount of the sums expended by the department pursuant to this section, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

e. The provisions of this section shall not limit the use of other remedies available to the department pursuant to law.

f. The commissioner may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to implement the provisions of this section.

Amended 1981, c.249, s.7; 1994, c.84, s.1; 2005, c.228, s.1.

58:4-6 Enforcement powers of department, civil, criminal; violations; penalties.

58:4-6. a. Whenever the Commissioner of Environmental Protection finds that a person has violated any provision of the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order issued pursuant thereto, the commissioner may:

(1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or

(2) Bring a civil action in accordance with subsection c. of this section; or

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, the commissioner may issue an administrative order: (1) specifying the provision or provisions of the law, rule, regulation, or order, of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction, including an order or judgment as will effectually secure the persons interested from danger of loss from the breaking of a dam. The court may proceed in the action in a summary manner or otherwise;

(2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

(3) Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which legal action under this subsection may have been brought;

(4) Assessment against the violator for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by a violation;

(5) A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

d. The commissioner is authorized to assess a civil administrative penalty of up to \$25,000 for each violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. In adopting rules and regulations establishing the amount of any penalty to be assessed, the commissioner may take into account the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation or order violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order specifying the amount of the fine imposed. If no hearing is requested, the notice shall become final after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or

the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

e. A person who violates any provision of P.L.1981, c.249 or any rule, regulation or order issued pursuant thereto, an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000 per day of such violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this section.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes. A second or subsequent offense under this subsection shall subject the violator to a fine, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor more than \$50,000 per day of violation, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes. A person who knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the provisions of P.L.1981, c.249 shall be guilty, upon conviction, of a crime of the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more than \$10,000, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes.

g. In addition to the penalties prescribed in this section, a notice of violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and with the clerk of the Superior Court and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed.

h. The department may require an owner or person having control of a reservoir or dam to provide any information the department requires to determine compliance with any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto.

i. Any person who knowingly, recklessly, or negligently makes a false statement, representation or certification in any application, record, or other document filed or required to be maintained

under the provisions of P.L.1981, c.249, shall be in violation of the act and shall be subject to the penalties assessed pursuant to subsections d. and e. of this section.

j. All penalties collected pursuant to this section or sums collected pursuant to R.S.58:4-5 shall be deposited in the "Environmental Services Fund," established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts deposited therein, and appropriated to the department for the removal of dams in the State.

k. The department shall have the authority to enter any property, facility, premises, or site for the purpose of conducting inspections to determine the condition of any dam, or to conduct inspections of ordered repairs or to otherwise determine compliance with the provisions of P.L.1981, c.249.

Amended 1953, c.54, s.5; 1981, c.249, s.8; 2005, c.228, s.2.

58:4-8. Personnel to conduct inspections

The commissioner may, when provided with sufficient funds, employ personnel for the inspection of existing reservoirs and dams and the supervision of the erection of new reservoirs and dams in this State or between this and any other state so that said structures may be built with due regard for the safety of property and life which might be endangered by improper construction thereof.

Amended by L.1981, c. 249, s. 9, eff. Aug. 6, 1981.

58:4-8.1. Short title

This act shall be known and may be cited as the "Safe Dam Act."

L.1981, c. 249, s. 1, eff. Aug. 6, 1981.

58:4-8.2. Periodic dam safety inspection and reporting procedure

The Commissioner of Environmental Protection shall, by rule, establish a periodic dam safety inspection and reporting procedure, on an annual or longer term basis, for the owner of any dam meeting the criteria contained in R.S. 58:4-1. The owner shall have a professional engineer inspect the dam and prepare and submit a report containing such information as the commissioner may require, concerning the safety of said dam and appurtenant structures. Every dam which raises the waters of any stream more than 70 feet above its usual mean low-water height or which impounds more than 10,000 acre-feet of water shall be inspected on an annual basis by a professional engineer retained by the owner, in the company of a professional engineer assigned from the Department of Environmental Protection.

L.1981, c. 249, s. 2, eff. Aug. 6, 1981.

58:4-9. Maintenance of existing reservoirs and dams; petition against abandonment

58:4-9. Where a reservoir or dam has been in existence 20 years and the owners of land along the shores above the dam or on the reservoir have made or shall have made permanent improvements on the land or where the shores have become a populated community, depending upon the permanency of the condition created, or where the reservoir or dam has become a valuable resource for the quality of life in the municipality in which the reservoir or dam is located, and a petition signed by a majority of the landowners along the shore of any pond formed by the reservoir or dam, or by any number of residents of the municipality in which the

reservoir or dam is located, or by the governing body of the municipality, protesting against the removal of the reservoir, water or dam or the decommissioning of the reservoir or dam has been filed with the commissioner, the owner or owners of the reservoir or dam shall not, without the consent of the commissioner, tear down, destroy or abandon the reservoir or dam, or, except for the purpose of making necessary repairs, withdraw the water below the usual low-water mark, or maintain the water at the reduced level.

Amended 1981,c.249,s.10; 1994,c.84,s.2.

58:4-10. Hearing on petition; fixing low-water mark; maintenance expenses

58:4-10. When a petition has been filed protesting against the removal of any reservoir, water or dam or against the decommissioning of any reservoir or dam as provided in R.S.58:4-9, the commissioner shall hold a public hearing, upon 30 days' notice to all parties interested, and following prior notice published 30 days before the hearing in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located. Following this public hearing, the commissioner may make a determination concerning the removal of the reservoir, water or dam or decommissioning of the reservoir or dam and may then establish and fix a permanent low-water mark. Should it appear that the maintenance of the reservoir or dam would be an undue burden upon the owner thereof, the commissioner shall enter into negotiations with the landowners interested around the reservoir or above the dam, the governing body of the municipality in which the reservoir or dam is located, and any other parties to the petition filed with the commissioner protesting against the removal of the reservoir, water or dam or the decommissioning of the reservoir or dam, for the purpose of determining how and by whom the expenses of maintenance shall be paid.

Amended 1981,c.249,s.11; 1994,c.84,s.3.